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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/758,323      | 01/14/2004  | Stephen J. Birkmeier | 03208               | 5378             |

4859 7590 10/06/2005

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| EXAMINER |
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SMALLEY, JAMES N

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3727

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/758,323 | <b>Applicant(s)</b><br>BIRKMEIER, STEPHEN J. |  |
|                              | <b>Examiner</b><br>James N. Smalley  | <b>Art Unit</b><br>3727                      |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/11/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Glanz US 5,111,946.

Glanz '946 teaches a circular plate (12), flaps (36) and skirt (14), all formed of plastic.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glanz US 5,111,946 in view of Sawatani US 4,948,009.

Glanz '946 does not teach an upper or lower support portion on the plate around the opening.

Sawatani '009 teaches a reinforcing ring (10) disposed around the opening on the upper and lower portions of the plate, and teaches the ring prevents tearing of the flaps.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Glanz '946, providing a reinforcing ring, such as that taught by Sawatani '009, motivated by the benefit of preventing tearing of the flaps.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glanz US 5,111,946 in view of Kittle et al. US 4,329,857.

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Glanz '946 does not teach reinforcing ribs on the flaps.

Kittle '857 teaches providing penetrable flaps (46) with reinforcing ribs (44).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the flaps of Glanz '946, providing reinforcing ribs, such as those taught by Kittle '857, motivated by the benefit of strengthening the ribs against penetration.

6. Claims 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glanz US 5,111,946 in view of Mauffette US 5,403,634.

Glanz '946 does not teach a liner.

Mauffette '634 teaches a flower vase, comprising a liner bag (18), fixed to a container wall (20) and (22) by a closure cap with a plug portion (40).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the cap of Glanz '946 to the vase of Mauffette '634, because such a cap is equally capable of closing off the vase and securing the liner to the vase wall.

Regarding claim 9, Glanz '946 teaches forming the lid of plastic.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glanz US 5,111,946.

Glanz '946 does not teach the cover plate being rectangular.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Glanz '946, forming it in a rectangular shape, because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:  
See attached PTO-892, citing relevant references.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns



**Stephen K. Cronin**  
Primary Examiner